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Comment on Recent Cases

BANKS AND BANKING: MEASURE OF DAMAGES FOR WRONGFUL REFUSAL TO HONOR DEPOSITOR'S CHECK.—What is the measure of damages for a bank's wrongful refusal to cash its depositor's check? In the recent case of *Hartford v. All Night and Day Bank*,¹ it was held that substantial damages were not recoverable, and that section 3302 of the California Civil Code states the full measure of damages in such a situation.

In the case referred to, Hartford drew a commercial check upon the defendant bank in which he had only a savings account. The check was returned marked "no account," and Hartford was arrested for passing a worthless check, pursuant to section 476a of the Penal Code making such act a felony. In the present action he alleged great damage to his credit and reputation, and recovered judgment for twelve hundred and fifty dollars in the lower court. The Supreme Court reversed the decision of the lower court, holding that because of the nature of the account upon which the check was drawn and the usual rules governing such accounts, the bank had not been guilty of any negligence. The case is undoubtedly correctly decided upon this ground. The court, however, also rests its opinion upon the proposition that the damages recoverable are governed by section 3302 of the Civil Code, to the effect that the detriment caused by the breach of an obligation to pay money only is deemed to be the amount due by the terms of the obligation, with interest thereon.

The common law is, unquestionably, that for such a wrongful refusal on the part of a bank, depositors may recover substantial damages.² The liability arises not alone for breach of the implied contract on the part of the bank to pay depositor's checks, but also depends on the tort committed against him.³ It is somewhat analogous to the recovery of an injured passenger against a common carrier.

The weight of authority in this country follows the common law rule.⁴ The recovery is based rather on the tort liability than on any contractual breach. Loss of credit and injury to reputation are deemed the proximate results of the bank's act. In sup-

¹ (June 30, 1915), 50 Cal. Dec. 49.

² *Rolin v. Steward* (1854), 14 C. B. 595, 78 Eng. C. L. 595.

³ *Marzetti v. Williams* (1830), 1 B. & Ad. 415, 20 Eng. C. L. 541.

⁴ *Lorick v. Palmetto Bank & Trust Co.* (1906), 74 S. C. 185, 54 S. E. 206; *Columbia Nat. Bank v. MacKnight* (1907), 29 App. Cas. (D. C.) 580, 10 Ann. Cas. 897; *Commercial Nat. Bank v. Latham* (1911), 29 Okla. 88, 116 Pac. 197; *Patterson v. Marine Nat. Bank* (1889), 130 Pa. St. 419, 18 Atl. 632, 17 Am. St. Rep. 778; *Schaffer v. Ehrman* (1891), 139 Ill. 670, 28 N. E. 917.

port of this, it is pointed out that checks passing through the clearing house dishonored leave their drawer's name in bad repute. Furthermore, a broad ground of public policy enters into the decisions of such cases.⁵ Banks manage and control the finances of the country, and owing to their quasi-public nature must be held to strictly accurate management of their business. The great importance of having business free from any obnoxious mismanagement by banks demands that for any mistakes in refusal to honor valid checks, the banks must be responsible in a substantial amount to the person injured. Even such recovery may be had on theory of breach of contract, the ordinary rule of damages being outweighed by the public policy demanding proper banking facilities.

In respect to the view point of our own courts, the very well considered case of *Simonoff v. Goodman Bank*⁶ expressly held that Section 3302 of the Civil Code was not controlling in such an action and permitted recovery of substantial damages. After pointing out the inequitable result which would obtain if this section were to state the measure of damages, the court goes on to say, "Is it possible that Section 3302 can be meant to take away a right universally conceded to exist elsewhere?" The answer that the court came to was that it did not. Proceeding under the section regulating code interpretation,⁷ the section was held applicable to contract relations exclusively.

In the present case, having pointed out that the liability is chiefly in tort, is it not reasonable that this section should not be allowed to state the full measure of damages? The code section regulating damages recoverable for a tort would seem to be equally, if not more, in point.⁸ Furthermore it is submitted, the code should not be taken as the only law on this question.⁹ Though the code establishes the law respecting the subjects to which it relates, it is not necessarily the only law on those subjects.¹⁰

All things considered, it is submitted, the better view to assume is that Section 3302 does not state the full measure of damages in these cases and that substantial recovery should be allowed where negligence is shown on the part of a bank in dishonoring its customers' checks.

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⁵ *Hilton v. Jessup Banking Co.* (1907), 128 Ga. 30, 57 S. E. 78, 11 L. R. A. (N. S.) 224, 10 Ann. Cas. 987; *Spearing v. Whitney-Central Nat. Bank* (1911), 229 La. 607, 56 So. 548; *Patterson v. Marine Nat. Bank* (1889), 130 Pa. St. 419, 18 Atl. 632, 17 Am. St. Rep. 778.

⁶ (1912), 18 Cal. App. 5, 121 Pac. 939.

⁷ Cal. Code Civ. Proc. § 858.

⁸ Cal. Civ. Code, § 3333.

⁹ *Peters v. Peters* (1909), 156 Cal. 32, 36, 103 Pac. 219; Cal. Pol. Code, § 4468.

¹⁰ *Arzaga v. Villalba* (1890), 85 Cal. 191, 24 Pac. 656.